ORIGINAL

IN THE UNITED STATES SUPREME COURT

1987 - 1988 TERM

DOCKET NO. 87-6573

Supreme Court, U.S.
FILED
MAY 24 1988
JOSEPH F. SPANIOL, JR.
CLERK

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LARRY LEWIS

VERSUS

MODULAR QUARTERS, INC. and
UNIVERSAL FABRICATORS, INC.

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ON APPEAL FROM
THE SUPREME COURT OF THE
STATE OF LOUISIANA
DOCKET NO. 87-C-1907

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RESPONSE BY UNIVERSAL FABRICATORS, INC. TO JURISDICTIONAL STATEMENT AND PETITION FOR WRIT OF CERTIORARI

Respectfully submitted,

ROY, FORREST & LOPRESTO

BY: _____

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MAY IT PLEASE THE COURT:

Pursuant to Order of the Court dated May 2, 1988 the following is the response of Universal Fabricators, Inc. to the Petition for Writ of Certiorari filed in this matter to review an Order of the Court of Appeal of Louisiana, Third Circuit, Docket No. 86-547 dated June 8, 1987.

Universal Fabricators, Inc. (respondent), submits that this case should be dismissed for lack of federal jurisdiction. In his grounds for jurisdiction, petitioner alleges that jurisdiction of this Court is granted under 28 USC 1257(1) or alternatively 28 USC 1257(3). 28 USC 1257 provides in pertinent part:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> (1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.
>
> (3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States."

Briefly reviewing the facts necessary for a determination of jurisdiction, petitioner originally filed suit in State District Court in Louisiana alleging the negligence of respondent, Universal Fabricators, Inc. Petitioner's claim against respondent was founded upon Louisiana Tort Law. The evidence presented in this case showed unequivocally that Universal Fabricators, Inc. was the statutory employer of petitioner. Under Louisiana Revised Statutes 23:1032 and 23:1061 a statutory employer (Univeral Fabricators) is immune from suit by a statutory employee (Lewis). Petitioner's claim against Universal Fabricators is clearly brought under state law and, accordingly, state law is entitled to prescribe the available defenses to third party claims brought pursuant to state law. No where in any of petitioner's pleadings or in any responses filed by respondent is there drawn in question the validity of a treaty or statute of the United States, nor has there been a decision by a state court against the validity of a treaty or statute of the United States.

In this case we have a state law cause of action and a response by respondent that bars or nullifies the petitioner's claim. No where in this proceeding is it claimed that Louisiana Tort Law, which creates plaintiff's rights, or Louisiana Revised Statutes 23:1032 and 23:1061, which provides respondent's defense, is repugnant to the Constitution, treaties or laws of the United States. The United States Supreme Court cannot be asked to condemn a state statute as in conflict with national legislation unless a conflict is clearly shown. Alabama State Federation of Labor vs. McAdory, 325 U.S. 450, 65 S.Ct. 1384, 89 L.Ed. 1725 (1945).

This Honorable Court in Ferri vs. Ackerman, 444 U.S. 193, 100 S.Ct. 402, 62 L.Ed. 355 (1979) stated that with respect to a third party claim by an LHWCA compensation recipient that when state law creates a cause of action, the state is free to define the defenses to the claim, including the defense of immunity, unless the state rule is in conflict with Federal law.

It is submitted that the Louisiana rule of immunity of a contractor in the position of Universal Fabricators is different from that under the LHWCA, but not in conflict with it, because Congress has not purported to prescribe the immunity rules to be applied by states in actions brought upon state law claims. As the Court in Garvin vs. Alumax of South Carolina, Inc., 787 F.2d 910 (4th Cir. 1986) points out, the Federal immunity rule is to be applied when the third party claim is a federal claim; when the third party claim is a state law claim, the immunity rules of that state are to be applied. The federal and state statutes are readily harmonized and each may function in its own sphere without interference from the other.

In order to give this Honorable Court jurisdiction to review a judgment in which the highest court of a state has rendered in favor of the validity of a statute, the validity of a statute must

have been drawn in question on the ground of its being repugnant to the Constitution, laws, or treaties of the United States and when no such ground has been presented to or considered by the courts of the state, this Honorable Court has no jurisdiction. Accordingly, it is submitted that the requirements outlined in 28 USC 1257 are not satisfied under the facts of this case and that this matter should be dismissed for lack of jurisdiction.

By counsel,

ROY, FORREST & LOPRESTO

BY: _____

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CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing document has this day been served on opposing counsel by depositing a copy thereof in the United States mail, postage prepaid and properly addressed.

LAFAYETTE, LOUISIANA THIS 24 DAY OF May, 1988.

_____

ALEX A. LOPRESTO, III